

Fight Against Covid-19 in Serbia: Saving the Nation or Securing the Re-Election?

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Introduction

The Covid-19 epidemic outbreak in Serbia coincided with the beginning of the election campaign for both parliamentary and municipal elections. The elections were called on 4 March 2020 to take place on 26 April; but were then suspended on 15 March due to the imposed state of exception intended to suppress the infectious disease. Soon, it became clear that what was at stake in the fight against Covid-19 was not so much saving the nation as securing the majority re-election of the ruling Serbian Progressive Party, headed by its populist leader and President of Serbia, Aleksandar Vu#i#. The consequences were a slew of contradictory policies and public statements by the President and his collaborators, revealing their juggling of different and sometimes conflicting interests. The whole dramatic episode turned into yet another example of Vu#i#'s Machiavellian political technology.

Legal Framework of Emergency Powers

The legal framework of emergency powers in Serbia is composed of the constitutional provisions regarding the state of exception, as well as the [Law on the Reduction of Risks from Catastrophes and on Management of Emergency Situations](#), and the [Law on the Protection of the Population from Infectious Diseases](#). Since the constitutionally mandated state of exception was declared, the two laws became of secondary importance and will not be addressed here.

The Constitution provides for a comprehensive procedural and substantive law on the state of exception. The National Assembly declares it through an absolute majority “when the survival of the state or its citizens is threatened by a public danger”. When declaring the state of exception, the National Assembly may prescribe measures for the derogation from constitutionally-guaranteed human rights ([Constitution](#), Article 105 (2) and 200 (1) and (4)).

When the National Assembly is not in a position to convene, the decision to declare the state of exception is adopted by the President of the Republic together with the President of the National Assembly and the Prime Minister. In this case, the measures which provide for derogation from constitutionally guaranteed human rights may be prescribed by the regulation of the Government, co-signed by the President of the Republic (Constitution, Article 200 (5) – (6)).

When the decision on the state of exception has not been passed by the National Assembly, the Assembly must approve it as soon as it is in a position to convene. In cases when the measures providing for derogation from constitutionally-guaranteed human rights have not been prescribed by the National Assembly, the Government is also obliged to submit the regulation on those measures to be upheld by the Assembly as soon as it is in a position to convene (Constitution, Article 200 (8) – (9)).

Upon declaration of the state of exception, derogations from constitutionally guaranteed human rights are permitted only to the extent necessary. However, those measures are by no means permitted with respect to the extended circle of absolute rights, including the: dignity and free development of individuals; right to life; inviolability of physical and mental integrity; prohibition of slavery, servitude and forced labour; minimal rules on the treatment of persons deprived of liberty; right to a fair trial; legal certainty in criminal law, etc. (Constitution, Article 202 (1) and (4)).

From the Most Relaxed to the Most Restrictive Approach

At the forefront in Vučić's methods to fight Covid-19, and as revealed below, is a 'Machiavellian method' or the acquisition and defense of powers unhampered by moral and legal constraints: "[Cruelty, deceit, fraud, corruption, treason, but also care or incentives, such as rewards or a prospective office, need to be applied.](#)"

Declaration of the State of Exception

As the elections were called for 26 April 2020, the only legal way to postpone them, for the sake of preventing further spread of the disease in the course of electoral activities (collecting signatures, campaigning, voting etc.), was to declare a state of exception. The Constitution lists electoral rights among derogable human rights (Article 52) and specifies that national deputies and municipal councilors are elected every four years (Articles 102 (1) and 180 (3)). Further, the Constitution sets the deadlines for calling parliamentary elections. More precisely, the President of the Republic must call them 90 days prior to the end of office term of the National Assembly (Article 101 (1)). Being so firmly entrenched in the Constitution, the periodicity of ordinary elections could be derogated from only by declaring state of exception.

The state of exception was declared on 15 March 2020 by the President of the Republic together with the President of the National Assembly and the Prime Minister. The highest state officials exercised this prerogative not as their *iure proprio*, but *iure alieno*, in the name of the National Assembly. However, no official explanation was offered as to why the National Assembly could not convene and declare the state of exception itself.

Still, this was not the only controversy related to the declaration of the state of exception. It was preceded by a number of statements by Vučić and his collaborators minimizing and even ridiculing the possibility that Serbia could be

seriously affected by Covid-19. In a matter of days, there was a stunning reversal of rhetoric with the “Italian scenario” becoming an all-justifying warning for foisting the state of exception on an utterly unprepared public. Later it became clear that the initial distraction of the public was deceitful. The ruling party and its satellites needed to [collect signatures](#) supporting their candidacies in the first half of March, even though there were already reported cases of Covid-19 in Serbia and therefore the risk of its propagation.

Furthermore, it remained unclear whether the elections were called after the first Covid-19 case was detected, in full knowledge that the electoral process would have to eventually be interrupted. These speculations were further supported by the fact that the elections were called beyond the constitutionally set time frame: 91 days ahead of the end of the term of the National Assembly, rather than 90 days. Vučić obviously feared that the effects of the epidemic could be harmful to the electoral interests of his party and rushed to hold elections as soon as possible and at all costs. The Machiavellianism did not stop there: deceit and (electoral) fraud were combined with cruelty.

Newly-implemented legislation

The declaration of the state of exception was accompanied by a governmental regulation co-signed by the President of the Republic prescribing the first measures derogating from the constitutionally guaranteed rights: a ban on all outdoor and indoor gatherings, as well as a stay of all electoral proceedings. This regulation was followed by [26 other measures](#), some of which were amended over ten times. The measures can be divided into two groups: those directly related to Covid-19 and those adopted as a consequence of that struggle. The former comprised various limitations of human rights, while the latter were instruments for the functioning of the state (e.g. staying of administrative and judicial proceedings) and economy (fiscal and monetary measures) in the context of the epidemic.

When it comes to human rights restrictions, two measures were of particular concern: the restriction of freedom of movement, and Skype trials (addressed in the next section). Oxford University's [Covid-19 Response Tracker](#) categorized Serbia among the countries with the highest stringency level in its response to Covid-19. One of the reasons for such scaling was the regulation that completely confined individuals aged 65 and over to their homes. This prohibition did not apply to Sundays from 3 to 8 a.m., for the purposes of buying food and disinfectant products. For the rest of the population, the curfew was generally in force every day from 5 p.m. to 5 a.m., except on Saturdays when it ran from 3 p.m. to 5 a.m. Occasionally, the curfew was extended to over two days at a time: from Friday evening to Monday morning.

These rules on the days and hours of confinement changed weekly, contributing to the confusion, insecurity and sense of helplessness. In addition to the humiliation resulting from the ever-changing regulations, there were the statements of the President, his collaborators, as well as those made in the tabloid press in which they stigmatized retirees, guest workers returning from European countries ravaged by Covid-19 and pet owners who went out attending to the animals' needs.

Interchangeably and without reasonable explanation, these groups were blamed for the rising number of infections. Out of this controlled chaos, the President appeared an image of a severe but caring father, willing to undertake whatever risk – including the unpopular measures of confinement – to save the nation.

Institutions on Respirators

The [image](#) of the President of the Republic in person delivering respirators across Serbia symbolized in its own way the functioning of democratic and rule of law institutions during the state of exception. The institutions themselves were on respirators controlled by one man. The National Assembly was bypassed in the declaration of the state of exception and ensuing legislation. That move was also tactical. The National Assembly would have offered a forum for opposition parties to express their discontent with Vučić's rule. With elections only weeks away after the end of the state of exception, this would have been too dangerous. Instead, the President acted as *deus ex machina*, receiving undivided media attention.

If suspending democracy was not enough, the rule of law was also seriously compromised. On 16 and 18 March the [Public Prosecutor's Office](#) and [High Judicial Council](#) issued statements announcing that in their respective criminal prosecution and trials, priority would be given, *inter alia*, to cases concerning criminal acts of flouting medical rules during the epidemic as well as of acts causing panic and disorder, all based on [preexisting Criminal Code](#).

Normally, this would be considered an expected reaction of institutions of the rule of law in the given context; nevertheless, there were concerns that the efficiency of the prosecutorial and judicial fight against Covid-19 was also in the service of the ruling party's re-election. This was confirmed when the Ministry of Justice instructed the judiciary to resort to questioning via video link to secure participation of a detainee in first instance proceedings if there was otherwise a risk of spreading the disease. On 1 April this instruction received the form of [government regulation](#) co-signed by the President of the Republic, despite [criticism](#) by [bar associations](#) and [academics](#) that such measure was altogether [unconstitutional](#). They argued that this practiced infringed upon defendant rights, including the right to fair trial, which cannot be derogated even in a state of exception. However, some courts acted upon the Ministry's instruction, sentencing accused to the maximum, three years in prison, even before the regulation was adopted. Yet, only days later, the Ministry issued a statement claiming that there were no cases of Covid-19 among detainees or prisoners.

Completing the picture of institutions on respirators, the Constitutional Court remained in a coma throughout the state of exception. Although it received initiatives for review of the constitutionality of the state of exception, its declaration and ensuing measures, it did not even meet once for the whole period.

Epilogue

The National Assembly eventually convened on 28 and 29 April 2020 and upheld all the measures. And, on 6 May 2020, it met again and abrogated the state of exception.

Even before these developments, as of 26 April 2020 – the initially scheduled election day – the furious Serbs who could bear no more Machiavellian corruption of their political system started expressing their discontent. Since the curfew prevented them from protesting in the streets, they made noise by beating on pots and pans, at 8:05 p.m., right after the applause of appreciation for medical and other essential personnel. The ruling majority immediately retaliated. At the call of one Serbian Progressive Party national deputy, counter-protests were staged on roofs of residential skyscrapers and public buildings in Belgrade and other major Serbian cities. Torches were lit and loud anti-opposition songs played. Although these were supposed to be those acts (breaking the curfew) to be given priority, the Prosecutor's Office did not react.

It is in this atmosphere of political violence that Serbia ends the state of exception and returns to the election campaign, now scheduled for 21 June. What the rest of the campaign will look like is hardly imaginable given that the ban on gatherings of more than 50 people remains in force, thereby preventing the rallies of the opposition parties whose access to media outlets is severely restricted.

